patent law. Thus where the owner of patents granted licenses to use and vend the patented articles, the licensee agreeing not to resell such articles for less than a stipulated price, nor to anyone who did not sign a like agreement, and that should such articles be sold in violation of such agreement, the license should be void, it was held that such conditions were valid, and that a sale in violation of them constituted an infringement. *Edison Phonograph Co.* v. *Pike,* 116 Fed. Rep. 863. See also the much cited case *Heaton-Peninsular, etc., Co.* v. *Eureka Specialty Co.,* 25 C. C. A. 267, 77 Fed. Rep. 288. But in *Victor Talking Machine Co.* v. *The Fair,* 118 Fed. Rep. 609 (1902), it was held that an absolute sale of a completed patented article, even though restrictions as to its resale are sought to be imposed by notices placed thereon, falls under the general rule, and that such restrictions are of no effect so far as subsequent purchasers are concerned. The court said in that case, "the patented article has passed, by the sale to the jobber, entirely out of the domain of patent, and cannot again be brought within that domain." Similar restrictions regarding copyrighted articles have been put upon much the same legal basis. Thus, in *Henry Bill Publishing Co.* v. *Smythe, 27* Fed. Rep. 914, it was held that so long as the owner of a copyright retains the title to books covered thereby he can impose restrictions as to the manner (as by subscription) and to whom the copies can be sold, and that violation of his instructions to his agents, who fraudulently sell to a person with notice or knowledge of the restrictions, or who under all the circumstances should be held to have notice thereof, will be an infringement of the copyright. But it is held, and certainly with sound reason, that where the owner of a copyright has made an absolute sale of copies of the book covered thereby, he cannot by notices printed in or attached to such books control the price at which such copies may be resold. *Bobbs-Merrill Co.* v. *Snellenburg,* 131 Fed. Rep. 530; *Harrison* v. *Maynard,* 61 Fed. Rep. 689, 10 C. C. A. 17.

NECESSITY FOR THE PERSONAL PRESENCE OF THE ACCUSED UPON ARRAIGNMENT.—The defendant was charged with larceny from the person, a misdemeanor punishable by fine or imprisonment, and executed a bail bond with sufficient sureties, conditioned that he should make his appearance before the proper court on a certain day and from day to day thereafter, to answer to the said offense. When the case was called the defendant was not present, but his authorized counsel offered to enter a plea of guilty for him. On this state of facts the Supreme Court of Georgia held, in *Wells* v. *Terrell* (1904), 49 S. E. Rep. 319, that the trial court properly refused to allow the plea to be made by counsel, and that only the actual, personal presence of the defendant would satisfy the condition of the bond.

In discussing the function and the essentials of an arraignment, the court said: "Regularly, this procedure requires the defendant to stand up, face the court and jury, and listen to the reading of the indictment. In answer to the clerk's inquiry whether he is guilty or not guilty of the offense charged, he orally makes his plea. This is not a mere idle ceremony, but furnishes a safe and conclusive means of identification. It permits the court, on the rendition of a verdict of guilty, to impose sentence and put the identified

defendant into execution. To secure this important end, it is therefore the state's right to have him present when the trial begins. Besides, this requirement prevents the prosecution from degenerating into the appearance of a mock trial before a moot court, with no one in apparent jeopardy. And while the arraignment may be expressly or tacitly waived, yet the waiver must be an equivalent of the thing waived, and be made while present, and under such circumstances as will serve the purpose of the law in requiring that formality."

It is very likely true that the court, in rendering this opinion, followed the weight of common law authority. But the importance of the actual presence of the accused is by no means so great as the court seems inclined to think, if we may judge from the expression of legislative opinion shown in the statutes of many of our states. Thirteen states and territories have the following statute now in force: "If an indictment be for a felony, the defendant must be personally present when arraigned; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel." These jurisdictions are Alaska, Arizona, California, Idaho, Minnesota, Montana, Nevada, New York, North Dakota, Oklahoma, Oregon, South Dakota, and Utah. There is no statute in any state, so far as we know, expressly requiring the personal appearance of a defendant charged with a misdemeanor. Two states, Arkansas and Iowa, require a plea of guilty to be made by the defendant in person in open court.

Aside from statute, there is some difference in authority regarding the necessity of the accused's presence. BISHOP, in his NEW CRIMINAL PROCEDURE, § 268, says that a personal appearance and plea in person is necessary, except in cases of misdemeanor punishable only by a fine without imprisonment, where the defendant may, for cause shown and with the consent of the court, appear by counsel. In support of this rule he cites a number of cases more or less closely in point, and among them *United States* v. *Mayo,* 1 Curt. (U. S.) 433. But the rule laid down by this case is somewhat different. It was there held that the privilege of allowing the defendant to plead by attorney would be regulated by the following circumstances: 1. That it is not an offense for which imprisonment *must* be inflicted. 2. It must be reasonably certain that the case is such that imprisonment *will not* be inflicted. 3. It must appear that the district attorney has given his consent or unreasonably withholds it. 4. Special cause must be shown by affidavit. 5. A special power of attorney must be executed and filed in the court by the attorney.

In *State* v. *Jones,* 70 Iowa, 505, on a charge of a felony, the defendant was not present, but his counsel put in a plea of "not guilty" for him. This was held to be proper practice, although under the statute a plea of "guilty" could only be made in the prisoner's presence. On the other hand, in *State* v. *Meekins,* 41 La. Ann. 543, it was held generally that a defendant must always be present at the arraignment and must plead personally. *Slocovitch* v. *State,* 46 Ala. 277, seems to take the same view, making no distinction between felonies and misdemeanors in this respect.

CHIEF JUSTICE REDFIELD, in *Gardner Tracy, ex parte,* 25 Vt. 93, lays down a rule quite similar to, but not identical with, the rule stated by BISHOP. He

says: "When the ordinary judgment will not extend to the infliction of imprisonment, by way of punishment primarily, the accused may appear by counsel, and having made appearance the trial may proceed. And one state has declared substantially this rule by statute, as follows: "If the indictment or information be for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel." Washington, Bal. Code, § 6885.

Doubtless, as JUDGE HUGHES suggests in *United States* v. *Shepherd,* 1 Hughes (U. S.), 521, in a somewhat analagous case, the notion that the physical absence of the defendant upon arraignment was a fatal defect in the proceedings, originated when the penal code of England was a very bloody one, and when the judges sought to mitigate the rigors of the law by availing themselves of technical irregularities to protect prisoners who were threatened with the most terrible punishments for the most venial offences. Under the humane laws which now regulate criminal proceedings, the reason for the old rule has largely passed away, and the statutes already referred to seem to voice the modern view.

UNCONSTITUTIONAL AIDS TO LOCAL INDUSTRIES.—The wisdom of a great part of the legislation designed to regulate or suppress the sale or consumption of liquors has yet to be proved. It is doubtful whether a higher plane of morality exists in states where prohibition, so-called, is a feature, than may be noticed in jurisdictions which have not resorted to that measure. Granting, however, that laws tending to suppress the evil of "rum" are a boon to mankind, it ought equally to go without saying that these laws should not serve as a cloak for the oppression of a class of merchants who pay an immense revenue to the government and deal in a lawful article of commerce. Acts, therefore, which do not have as an object the honest policing of the liquor trade, but are partisan measures to benefit local dealers or producers by discriminating against outside merchants or products should be regarded with the contempt which hypocrisy of this kind deserves.

It is for the courts to condemn such legislation. For that reason, decisions like that of the Texas Supreme Court in the recent case of *Douthit* v. *State* (Dec. 1904), 83 S. W. Rep. 795, will, we believe, be read with surprise. It was held, after a cursory examination, that a proviso to a law imposing certain taxes upon liquor dealers and requiring bonds to be procured by them was constitutional, although it stated that the "provisions [mentioned] shall not apply to wines produced from grapes grown in the state, while the same is in the hands of the producer or manufacturer thereof." Only one case was cited to sustain the position taken, *American Sugar Refining Co.* v. *Louisiana,* 179 U. S. 89, and that is clearly distinguishable. It is strange that the Texas court could overlook the other decisions of the same tribunal bearing upon the question. In *Welton* v. *Missouri,* 91 U. S. 275, an act declaring a license tax upon merchandise peddled except the growth, product, or manufacture of Missouri was held void. In *Guy* v. *Baltimore,* 100 U. S. 434, an ordinance of Baltimore imposing a wharfage tax on extra-state grown products was decided to be invalid. It was there stated that a state cannot "build up its domestic commerce by means of unequal and oppressive burdens upon the industry